



31 May 2002

Mr. David R. Allen  
ORO NEPA Compliance Officer  
Department of Energy  
Oak Ridge National Laboratory  
P. O. Box 2001  
Oak Ridge, TN 37831

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AMESQ

Leg No. 64216  
Date Received JUN 7 2002  
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Dear David,

**Comments on DOE/EA-1113-A Draft May 2002  
"Environmental Assessment Addendum for the Proposed Transfer of Parcel  
ED-1 to the Community Reuse Organization of East Tennessee and  
A Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the  
Community Reuse Organization of East Tennessee"**

Given DOE's recent history of natural resource protection in regard to real estate transactions, TCL recommends the following:

1. Developing an effective third-party means to ensure protection of the natural resource values set aside in the previous FONSI, active management of the exclusion zone, monitoring mandated mitigation for the addendum, and on-going monitoring requirements. TCL recommends:
  - transferring ownership of the exclusion zone to the state (TWRA), a Federal natural resource agency, or an NGO;
  - establishing a third party agreement for oversight of mitigation and monitoring requirements with the same organization,
  - providing this organization an endowment sufficient to cover their annual cost for services, and
  - having CROET or the landowners establish a performance bond until development has been completed.
2. Change "Post-Development" monitoring standards to pre-development for those sites not already developed at ED-1.

3. Mitigate adverse environmental impacts to "Development Area 4" of Parcel ED-1.
4. Analyze impacts to Cerulean Warblers and alter the addendum accordingly.
5. Mitigate cumulative impacts.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Marina", written in a cursive style.

Marty Marina  
Executive Director

Joseph A. Lenhard  
125 Newell Lane  
Oak Ridge, Tennessee 37830  
May 23, 2002

Mr. David Allen, SE-30  
U.S. Department of Energy  
P.O. Box 2001  
Oak Ridge, Tennessee 37831-2001

Subject: Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

Dear Mr. Allen:

I have read with great interest the Environmental Assessment Addendum for Parcel ED-1 and would like to make the following comments.

The site should be transferred to the Community Reuse Organization of East Tennessee (CROET) as quickly as possible and with as few restrictions as possible.

The development of ED-1, the related environmental issues and this transfer have been well publicized to a broad and diverse audience. Therefore, the 15 day review period, which meets all legal requirements, is more than adequate. The DOE effort for expeditious transfer of the property with adequate review should be applauded.

The existing Environmental Assessment for this parcel resulted in monitoring efforts over the last 5 years, during the most intensive development period of the park, and those efforts have shown zero adverse impacts. This should indicate that continued long term monitoring is unnecessary.

The nearly 500 acres of natural area provides a significant buffer for any threatened or endangered species and should preclude the necessity for extensive on-going monitoring and inspections of these areas.

CROET should only be held accountable for any invasive species it is responsible for directly introducing.

The document is written in a manner that could be interpreted as prohibiting activity within the Natural Area. This could be very troublesome since portions of the DOE patrol and access roads and bridges lie in the Natural Area and these require frequent entry and periodic maintenance. As

Mr. David Allen

Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

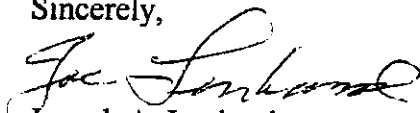
a note of interest, the Horizon Center utility systems and roads already go through the Natural Area. I would suggest that the following language be placed in the document: "When activity is required in the natural area to maintain or extend roads, bridges and utility systems, CROET will assure that these activities are performed in a manner with minimal impact on the environment."

The prohibition on using non-native grasses for landscaping is ridiculous given the current existence of non-native species throughout the immediate area and the region. One only needs to look at the former K-25 site, the adjacent State highway right-of-ways and the nearby residential developments to see that this is an attempt to bar the door after the horse has left the barn. This prohibition and the requirement that "Lawn areas will also be kept to a minimum" should be removed.

I am troubled that the extensive requirements for environmental monitoring may be interpreted by CROET clients (i.e. private sector companies) that they will be responsible after flow-down for many of these requirements. It should be made clear that these are requirements placed on CROET, not their clients. Furthermore, I am concerned that these requirements muddle the focus of the CROET. The mission of the CROET is to bring in new companies and jobs to the region. The requirements within the Addendum seem to require that CROET become an environmental research organization. If taken to an extreme, the requirements regarding environmental monitoring and stewardship could make the mission of CROET impossible. Therefore, I would strongly recommend that all requirements that are not absolutely essential to the maintenance of the few threatened or endangered species on the site be removed.

Thank you for the opportunity of commenting on this most important issue.

Sincerely,



Joseph A. Lenhard

**Perry, Walter N**

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**From:** Josh Johnson [JOSHJOHNSON@prodigy.net]  
**Sent:** Thursday, May 30, 2002 12:52 AM  
**To:** NEPA (Stakeholders comments mailbox)  
**Subject:** Transfer of ED-1

918 West Outer Dr  
 Oak Ridge, TN 37830  
 (865)-483-5152  
[joshjohnson@prodigy.net](mailto:joshjohnson@prodigy.net)  
 30 May 2002

Mr David R. Allen  
 U.S. Department of Energy  
 SE-30-1  
 P.O. Box 2001  
 Oak Ridge, TN 37831

[NEPA@oro.doe.gov](mailto:NEPA@oro.doe.gov)

**Subject:** Comments on Mitigation Action Plan for the Proposed  
 Transfer of Parcel ED-1 to the Community Reuse  
 Organization of East Tennessee (CROET), Draft,  
 DOE/EA-1113-A, May 2002

and

Environmental-Assessment Addendum for the Proposed  
 Transfer of Parcel ED-1 to the Community Reuse Organization  
 East Tennessee, Draft, DOE/EA-1113-A, May 2002.

Dear Mr Allen:

I shall state my conclusions at the start, to avoid confusion between them and the rationale.

1. I agree that, to accomplish the objective of attracting industry to ED-1, ability to give deeds to the land will be helpful.

2. I do not believe the land should be transferred to CROET to accomplish this. The objective can be as readily attained under City ownership, with CROET managing the Horizon Park under its 38-year lease. If an attractive industry wanted to locate in ED-1 and to own rather than sub-lease its land, I find it difficult to imagine that City Council would reject a request by CROET to sell. I believe DOE should release the land only to the City, in spite of the precipitous waiver of self-sufficiency rights, with negligible prior notice or public input, by Council at its meeting 6 May 2002.

Starting from where we are today, the above actions seem best. It would have been preferable to carry out an Environmental Impact study for the whole Oak Ridge Reservation before the release

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of green field property, rather than an Environmental Assessment, culminating in a questionable FONSI. However, the conclusion that an industrial park was a rational need of the city and that the ED-1 tract (not necessarily including EDI-2 and ED-3) was the most suitable location for it would likely have been the same. However, the role of CROET needs examination.

In the excerpt from the Federal Register, Vol 65, p. 10686, provided with the drafts, section 2 states that "Membership in a CRO is composed of a broad representation of persons and entities from the affected communities" and later "they can assure a broad range of participation in community transition activities." Community Reuse Organizations at other sites may meet this description, but CROET in the opinion of many of us is not characterized by the adjective "broad." I do not question the good intentions and prominence in the community of members of the Board, but it is dominated by individuals focused on economic development, largely oblivious to other values the Reservation may have, for example, for environmental research.

It has organized itself in an array of limited liability corporations for various activities. These are walled off from control of CROET, in order to shield the parent from law suits for any of their actions. They are apparently self perpetuating, in that their boards fill any vacancies. This description may be inaccurate, but CROET has disclosed nothing to contradict it.

There appears to be no provision for oversight or auditing of CROET or the LLCs by the city or DOE. In waiving prior claim to purchase of the land via self-sufficiency, Council has surrendered its most important leverage for public input into the important activities of attracting industry and of promoting economic growth.

It has further given up participation in proceeds from sales. On page 6 of the Addendum, it is disclosed that CROET has spent about \$14 million of public funds on infrastructure of the Horizon Park, or about \$33,000 per acre developable for industry. This has come from the City, State, and DOE, through its funding of CROET. As it stands, any money from property sales will accrue to CROET, with no restriction on what it does with it, outside the generic restrictions on not-for-profit organizations. Even with the recognition that attraction of industry will probably require subsidy, likely involving pricing of land below fair-market value, the City is foregoing a substantial asset.

In summary, I feel the objectives of self-sufficiency and the public interest are best served by city ownership of any transferred land, with day-to-day management by CROET or such other instrumentality the City designates, within the limits allowed by existing leases.

Respectfully,

James S. Johnson, Jr.

6/4/02



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DOE OVERSIGHT DIVISION  
761 EMORY VALLEY ROAD  
OAK RIDGE, TENNESSEE 37830-7072

June 12, 2002

David R. Allen  
NEPA Compliance Officer  
DOE Oak Ridge Operations  
PO Box 2001, SE-32  
Oak Ridge, TN 37831-8739

Dear Mr. Allen

**National Environmental Policy Act Environmental Assessment Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET)**

The Tennessee Department of Environment and Conservation, DOE Oversight Division has reviewed the subject document in accordance with the requirements of the National Environmental Policy Act and associated regulations of 40 CFR 1500-1505 and 10 CFR 1021 as implemented.

**General Comments**

The Data Summary presented in pages 5 and 6 of the Mitigation Action Plan (MAP) referring to the previous MAP indicates that the monitoring activities by the Department of Energy (DOE) and its contractors have progressively decreased since 1997. This indicates a failure to meet the minimum monitoring mitigation efforts required in the previous MAP. In a letter dated February 12, 2002 to DOE, the state expressed concern regarding DOE's seeming lack of commitment to comply with the implementation of the previous MAP and requested that DOE fully and clearly address its position on the execution of the mitigation activities as outlined in the "*Environmental Assessment (DOE/EA-1113), Finding Of No Significant Impact (FONSI)*."

The Lower East Fork Poplar Creek (LEFPC) Floodplain Soils Remedial Action project only addressed mercury contaminated soils within the 100 year floodplain. Because of continuing releases of mercury into LEFPC from the Y-12 Plant, surface water and sediment issues for LEFPC were to be addressed as part of the DOE Y-12 Plant Environmental Restoration Program. Although steps have been taken at Y-12 to reduce mercury discharges into the creek, no CERCLA decision has been made concerning the LEFPC surface water and sediments. Therefore, this EA should address DOE's plans to insure proper activities are completed in accordance with Section 120 (H) of CERCLA prior to transfer of properties from the Oak Ridge National Priority List (NPL) site.

**Specific Comments**

**Section 3.4.2 Water Supply:** The reference to the proposed water storage tank should be more specific regarding the future water needs for the site. Discuss alternative plans for the future development of the site, which is dependent upon the completion of the cities "looped" service, if this "looped" service is not implemented.

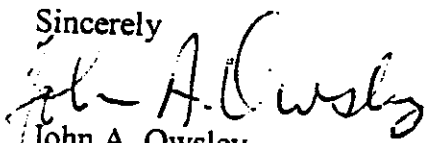
**Section 4.1 Threatened and Endangered Species:** The implication that construction activities on the site were the cause of the decline in Tennessee Dace in Dace Branch is speculation at best. There has been continued decline of population numbers over the years since the end of construction indicating that there may be other causal factors involved. Continued monitoring at this point is needed to further evaluate the condition of this fish population. If current sampling indicates that the population has been further affected, DOE should implement whatever action plan is necessary to mitigate impacts.

**Section 4.2 Cultural Resources: Line 30:** "....these sites would continue to be periodically inspected...." DOE should be specific on how to implement the inspection.

**MAP Document Page 3, Figure 1.1:** The coverage of the Threatened and Endangered species appears to be incomplete. There are omissions of formerly identified (see references below) cultural resources on the map (Page 3, Fig. 1.1) in the MAP document. These omissions include cultural resource site numbers: 950A, 953A, 935A, 953B/C, 954A, and 975A/B. References: (1) An Evaluation of Previously Recorded and Inventoried Archaeological Sites on the ORR, Anderson & Roane Counties, Tennessee, ORNL/M-4946, DuVall, Glyn D. and Sousa, Peter A., 1996. (2) Historic Sites Reconnaissance of the Oak Ridge Reservation, Oak Ridge, Tennessee, ORNL/TM-5811, Fielder, George F., et al, April 1977.

If you have any questions concerning the above questions, please contact me at (865) 481-0995.

Sincerely

  
John A. Owsley  
Director

xc: Dodd Galbreath, TDEC  
Reggie Reeves, TDEC  
Robert Brown, DOE  
Margaret Morrow, DOE  
Steven Alexander, FWS  
Lawrence Young, CROET



WestGate Lodging  
101 Gates Drive  
Oak Ridge, TN 37830

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Date Received JUN 17 2002

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June 13, 2002

Mr. David Allen, SE-30  
U.S. Department of Energy  
P.O. Box 2001  
Oak Ridge, Tennessee 37831-2001

Subject: Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

Dear Mr. Allen:

I have read with great interest the Environmental Assessment Addendum for Parcel ED-1 and I appreciate this opportunity to share some thoughts on this issue.

Parcel ED-1 is a site that is critical to this community as we try to turn the corner from a "Government Town" to a city with a more diverse employment base that is needed to stabilize our local economy. It is extremely important to Oak Ridge and this region that this site be transferred to the Community Reuse Organization of East Tennessee (CROET) as quickly as possible and with as few restrictions as possible.

I am fully aware that the site includes several areas that are environmentally and/or historically sensitive. I am a lifetime resident of this area and one that is very concerned that these important sites be properly managed and preserved for future generations to enjoy.

With preservation and proper stewardship in mind, I can't imagine a better organization to provide this oversight than the CROET organization. As you are aware, a Board of approximately 40 volunteers representing very diverse backgrounds manages the CROET organization. I am a member of this Board and am personally acquainted with all of them. I am sure that no one could question the integrity of this group or substantiate any claims of narrow or fixed agendas that may conflict with DOE or community concerns for this site.

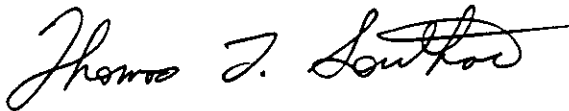
The mission of the CROET is to bring in new companies to the region so that jobs can be created. The requirements within the Addendum seem to require that CROET become an environmental research organization. If taken to an extreme, the requirements regarding environmental monitoring and stewardship might make the real mission of CROET not only problematic but also potentially impossible. As such, I would recommend that all requirements that are not absolutely essential to the maintenance of the few threatened or endangered species on the site be removed.

I think it is also important to point out that even after the transfer of this site is concluded, the Federal government will continue to be the largest property owner in Oak Ridge, owning over 50 per cent on the

acreage in Oak Ridge.

Thank you for the opportunity of commenting on this most important issue.

Sincerely,

A handwritten signature in cursive script, reading "Thomas L. Southard". The signature is fluid and stylized, with a prominent initial 'T' and a long, sweeping underline.

Thomas L. Southard  
WestGate Lodging  
Owner

L. O. Rabinowitz  
□ Personnel Technology Group, Inc.  
PO Box 4128  
Oak Ridge, TN 37831

June 11, 2002

Mr. David Allen, SE-30  
US Department of Energy  
PO Box 2001  
Oak Ridge, TN 37831-2001

Dear Mr. Allen:

I am sending this transmittal as a means of commenting on the Environmental Assessment Addendum for Parcel ED-1.

As a member of the Board of Horizon Center, LLC, I share the Department of Energy's desire to balance environmental stewardship with the important development efforts that are taking place at the site. Clearly, the Community Reuse Organization of East Tennessee (CROET) has done an exemplary job of meeting its responsibilities in both of these areas.

The site preparation and development that has taken place to date includes the most significant work that is likely to take place. Thousands of tons of dirt have been moved and much of the park's infrastructure has been placed. All the while, monitoring over the past five years has shown that those areas that have been designated as sensitive at ED-1 have not been negatively affected. I understand that the site will be inspected annually for the next three years. Given the superior results obtained so far, the covenants that will govern park tenants, and the 500 acres designated as a protected natural area, the three annual inspections should be sufficient in ensuring that the parcel will continue to be environmentally robust, and further annual inspections will be unnecessary.

I'm proud of the significant progress that CROET has made in development of Parcel ED-1. CROET has done this with sensitivity to the natural environment that enhances the appeal of the site. However, it is time that CROET put more of its efforts into other vital activities—such as successfully recruiting new businesses—that will ensure the success of its mission. In order to do so, there are a number of items that must be addressed:

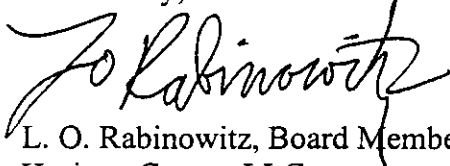
1. The transfer of the ED-1 site should be made to CROET as soon as possible to maximize economic development opportunities that will benefit the area.
2. Development areas should be de-listed property under Superfund designation. Furthermore, these areas should be provided with transferable indemnification.
3. The environmental assessment is written in such a way as to prohibit *all* activity within the natural area. This should be revised to allow crossings in non-sensitive natural areas for such mission critical activities as developing infrastructure extensions.

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4. CROET (and not CROET's clients) should be responsible for any future or ongoing environmental monitoring. To encumber clients with this responsibility will put a chilling effect on recruitment efforts.

Thank you for your time and consideration. I appreciate your efforts in helping the area achieve economic viability through your support of progressive programs such as those being advanced by CROET.

Yours truly,

A handwritten signature in black ink, appearing to read "L. O. Rabinowitz", written in a cursive style.

L. O. Rabinowitz, Board Member  
Horizon Center, LLC



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

446 Neal Street  
Cookeville, TN 38501

June 6, 2002

Mr. David Allen  
U.S. Department of Energy  
Oak Ridge Operations Office  
200 Administration Road  
Oak Ridge, Tennessee 37831

✓ Dr. James L. Elmore  
U.S. Department of Energy  
Oak Ridge Operations Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

Dear Mr. Allen and Dr. Elmore:

Thank you for your letter and enclosures received April 23, 2002, regarding informal consultation under Section 7 of the Endangered Species Act for the proposed transfer of Parcel ED-1 of the Oak Ridge Reservation (ORR) to the Community Reuse Organization of East Tennessee (CROET). The U.S. Fish and Wildlife Service (Service) Tennessee/Kentucky Field Office also received the National Environmental Policy Act (NEPA) Environmental Assessment (EA) addendum and mitigation action plan (MAP) for the proposed transfer on May 20, 2002. This addendum to the EA was finalized prior to consideration and incorporation of Service comments on the request for informal consultation. The public comment period for this addendum was extended to June 14, 2002, after significant public opposition to the originally proposed 15-day review period. This addendum to the EA considers the continued development of approximately 426 acres within the remaining 957-acre Parcel ED-1. CROET would be responsible for the protection of wildlife habitat, plant communities, threatened and endangered species, water resources, wetlands, and historic and archaeological resources within the exclusion zone, now referred to as the "Natural Area." The title transfer is being conducted under Section 161(g) of the Atomic Energy Act of 1954 and a Department of Energy (DOE)-issued interim final rule, "Transfer of Real Property at Defense Nuclear Facilities for Economic Development" (10 CFR Part 770). This rule became effective on February 29, 2000. Service personnel have reviewed the information submitted and offer the following comments for consideration.

ORIGINALLY LOGGED

On July 25, 1995, the Department of Energy (DOE) requested information from the Service regarding Federally threatened and endangered species which may be present on a 1,000-acre area designated as Parcel ED-1. The Service concurrently received a copy of correspondence from Oak Ridge National Laboratory (ORNL) to the Tennessee Wildlife Resources Agency (TWRA) which detailed the current knowledge of protected species distribution within Parcel ED-1. On August 15, 1995, Service personnel responded to the DOE request with information regarding the potential presence of the Federally endangered gray bat (*Myotis grisescens*), the Federally threatened Virginia spiraea (*Spiraea virginiana*), and four status review (candidate) species. At the time of the initial request from DOE, the Service was provided with relevant information obtained from surveys conducted on the ED-1 parcel by ORNL staff and independent researchers contracted by DOE regarding the adequacy of surveys for the gray bat conducted on parcel ED-1. Suitable foraging habitat for the gray bat and the Federally endangered Rafinesque's big-eared bat (*Corynorhinus rafinesquii*) was identified. Suitable summer roosting habitat for the Federally endangered Indiana bat (*Myotis sodalis*) was also identified within the floodplain of East Fork Poplar Creek. On September 6, 1995, DOE submitted a Biological Assessment (BA) for the species identified. Although there is a documented cave within the boundaries of Parcel ED-1, this information was not included in the BA and this office has never received pertinent survey data from this location. On October 4, 1995, the Service concurred with DOE's conclusion that the proposed lease of Parcel ED-1 would not adversely impact Federally listed protected species and/or habitat. We regret that our concurrence was granted without the opportunity to review the specific bat surveys conducted in 1992 by ORNL staff and researchers at Tennessee Technological University (TTU) within the East Fork Poplar Creek watershed. We also did not possess specific information regarding the utilization of Parcel ED-1 by a number of special status neotropical migratory bird species.

The Service received a moribund gray bat from TWRA in 1994. This individual was collected in a building in the Upper East Fork Poplar Creek watershed. Subsequent analyses of this specimen indicates exposure to numerous site-specific contaminants present in the Upper East Fork Poplar Creek. This specimen was most likely foraging primarily in the East Fork Poplar Creek watershed prior to its death. In August of 1995, a bat, believed to be a gray bat, was caught in another building at Y-12, but released prior to a positive identification. In 1999, the Service was provided with copies of bat surveys conducted in the East Fork Poplar Creek watershed by ORNL staff and TTU researchers in 1992 and 1997. The 1992 survey was conducted in less than optimal conditions with ambient temperatures of less than 50 degrees Fahrenheit, and little or no insect or bat activity reported. The 1997 survey resulted in the capture of 14 bats representing six different species. No Federally listed or special concern species were captured. Foraging habitat for the gray bat and summer roosting habitat for the Indiana bat were identified. The results of the 1997 survey were included in the pre-development ecological surveys for the annual report entitled "Implementation of Mitigation Action Plan for DOE/EA-1113: Lease of Parcel ED-1 of the Oak Ridge Reservation, Oak Ridge, Tennessee (DOE 1997)." These 1997 surveys were designed to establish pre-development conditions, to serve as a baseline for future comparisons, and to establish future monitoring sites. Although this report referenced the 1992 survey efforts, no discussion of the less than optimal conditions encountered were included in the document. In 1999, the Service was also provided with information regarding a gray bat roost located on the ORR but not within the East

Fork Poplar Creek watershed. We believe the previously conducted surveys for the species do not provide conclusive evidence that these species do not utilize the East Fork Poplar Creek watershed for foraging. The Mitigation Action Plan (MAP) for the Parcel ED-1 EA identified specific exclusion zones and, based on our knowledge of the area, the majority of the identified Indiana bat roosting habitat lies within this zone.

There have been numerous problems with the MAP implementation, including the required annual monitoring of specific parameters and frequency of reporting. The Service has not been afforded the opportunity to review these documents since the original 1997 report was prepared. The revised MAP indicates that State-listed threatened and endangered plant species were not monitored in 1999 or 2000. Bats have not been surveyed since the 1997 efforts, and macroinvertebrates (Lepidoptera), mammals, reptiles, and game species (i.e., deer, turkey, duck, and bobwhite) were not surveyed in 1998, 1999, or 2000. The Lepidopteran monitoring does not account for the primary forage base of the gray bat or lactating female Indiana bats. The Summary of Pre- and Post-Development Monitoring (1996-2000) in Section 2.1 of the MAP stipulates that there are insufficient data available to evaluate impacts and yearly trends because there are data for two or fewer years. Amphibians were monitored in 1999. In a June 11, 2001, correspondence from the Tennessee Department of Environment and Conservation (TDEC), TDEC identified several deficiencies associated with the 2000 MAP survey efforts. These deficiencies included the absence of follow-up information regarding threatened and endangered species. TDEC emphasized the need for DOE to ensure that any future new site preparations, construction projects, utility installations, and expansions or disturbances involving excavations or clearing of previously undisturbed vegetated areas of ED-1 land or forest, be preceded by pre-construction rare plant and animal surveys of the designated areas to be disturbed. We are uncertain if the 2000 document was ever published. In a February 12, 2002, correspondence from TDEC to DOE, many concerns regarding compliance and monitoring issues with the ED-1 MAP were outlined.

The Service has recently become aware of several instances of non-compliance by CROET-authorized contractors working in Parcel ED-1, and some of these were discussed in Section 4.1 of the addendum. These incidents may have led to the extirpation of sensitive aquatic receptors, such as the Tennessee dace (*Phoxinus tennesseensis*), in the East Fork Poplar Creek watershed. The cumulative effects of these issues and concerns lend credence to our reevaluating the efficacy of the original 1996 EA and MAP, the decision process which led to the FONSI, and the ability of CROET to effectively monitor fish and wildlife resources and afford them adequate protection. It seems apparent that the oversight of DOE on CROET construction and monitoring activities in Parcel ED-1 since the original lease was signed has not been sufficient.

Data recently provided to the Service indicates that Parcel ED-1 is intensively utilized by a number of neotropical migratory birds deemed by the Service as species of management concern and on the National watch list of the Partners in Flight (PIF) program. These species include: chuck-wills widow (*Caprimulgus carolinensis*), blue-winged warbler (*Vermivora pinus*), prairie warbler (*Dendroica discolor*), Kentucky warbler (*Oporornis formosus*), prothonotary warbler (*Protonotaria citrea*), cerulean warbler (*Dendroica cerulea*), and wood thrush (*Hylocichla mustelina*). The East

Fork Poplar Creek Breeding Bird Route encircles the MAP exclusion zone on the west and north sides of Parcel ED-1. The breeding bird counts have been performed by private and academic organizations over a seven-year period from 1995-2001.

The Service is currently in litigation with the Southern Environmental Law Center regarding the status of the Cerulean warbler and the need for Federal protection pursuant to the Endangered Species Act. It is listed by the State of Tennessee as a species in need of management. The Cerulean warbler has been observed over the last four breeding seasons on the edge of and within the MAP exclusion zone. There is no discussion of this species and minimal discussion on the statistical information on migratory bird species presented in Appendix A of the addendum to the Parcel ED-1 EA. This includes recent information generated by contractors surveying these species for CROET. A preliminary review of the data presented in Appendix A suggests there has been an observed decline in the number of individuals and species on both the floodplain and perimeter routes from 1997 to 2000. This would appear to coincide with the initiation of construction activities on Parcel ED-1. The Service believes that the presented data deserved a full and complete assessment and discussion within the text of the addendum. This is especially important considering the emphasis on migratory birds in the deliberations of the ORR Land Use Focus Workgroup. Current surveys of forest interior bird habitat and potential negative impacts due to habitat fragmentation in the focus area are being performed by contractors assisting the workgroup. It is not clear why this wasn't also discussed in the addendum or MAP. Without a similar thorough assessment designed with specific data quality objectives in place, we believe the existing MAP does not adequately address the protection of migratory birds on Parcel ED-1.

The Service has not been consulted with by DOE, CROET, or authorized contractors regarding all construction activities on Parcel ED-1, including the construction of a cellular communications tower in 2000. The 0.25-acre site is within a previously undisturbed area on McKinney Ridge and could pose cumulative detrimental impacts to migratory birds which utilize the area. A search of our Office Activity Logging System database does not indicate any consultation from DOE, CROET, or other designated officials on the construction of this cell tower, contrary to specific rules and regulations promulgated by the Federal Communications Commission. We did review a co-location request submitted by a consultant contracted by Tritel. Co-location requests typically do not undergo the same level of scrutiny as original tower construction and license applications. We do not have any records for FCC license or ownership of the referenced tower, however, we believe that Doss Constructive Ideas (National Wireless Construction) built the "Highway 95 Horizon Center Site" in late 1999 or early 2000. The co-location request was not received in this office until December 12, 2000. We believe it is important to identify the specific type of structure and associated lighting for the tower. We have also reviewed requests from the City of Oak Ridge and East Tennessee Development District regarding the construction of the Horizon Center substation and transmission lines. A majority of that construction occurred in previously disturbed areas.

Specific guidance on the responsibilities of Federal agencies to protect migratory birds contained in Executive Order (EO) 13186 was issued on January 10, 2001. There is no discussion of EO 13186 in the addendum to the Parcel ED-1 EA. A Memorandum of Understanding (MOU) between the



Service and DOE regarding the protection of migratory birds on DOE-owned lands, including the ORR, has not been completed. The Executive Order stipulated this activity to be completed within two years of the EO issuance. One of the primary objectives of a MOU between the Service and DOE would be to ensure that the environmental analyses of Federal actions required by the National Environmental Policy Act (NEPA) or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern. We also have not been made aware that any pre-construction surveys or coordination between DOE and TDEC occurred for any construction activities on Parcel ED-1 during 1998, 1999, 2000, and 2001. Considering the importance of the ORR and this specific area to the management considerations of the PIF program for the Ridge and Valley physiographic province, including its inclusion as a Southern Appalachian Man and the Biosphere program biosphere reserve unit, we are concerned that DOE has ignored relevant data in the preparation of this addendum to the Parcel ED-1 EA.

The addendum to the ED-1 EA does not specifically outline in detail future monitoring efforts for threatened and endangered species, migratory birds, and the aquatic communities in East Fork Poplar Creek. The cumulative effects of the continuing disposition of DOE ORR properties to the City of Oak Ridge and other entities for economic development purposes on legally protected species, including migratory birds, are not adequately addressed in this addendum to the Parcel ED-1 EA. Pine Ridge is a prime example of limited foresight and oversight by DOE in previous land transfers. The limited discussion regarding the summary of pre and post-development monitoring in Section 2.1 of the addendum ignores potential future development activities that would be overseen by CROET. Despite their best intentions, we are not certain that CROET can accommodate or implement the monitoring needs for Parcel ED-1, as well as the specific mitigation guidance contained in the MAP. Contrary to the assertion in Section 3.1.3 of the MAP, the re-naming of the exclusion zone(s) to the "Natural Area" does not provide any mitigation of potential adverse impacts from continued development on Parcel ED-1.

It is not clear how the referenced CROET commitments in the MAP would be incorporated into a legally-binding document. Deed restrictions would likely not suffice in affording the highest level of protection to legally protected species. A specific contractual conservation easement on any conveyed real estate would likely be a preferred approach by the Service to ensure adequate protection of the remaining Parcel ED-1, however, an Integrated Natural Resource Management Plan, Habitat Conservation Plan, or a variation of a similar approach designed specifically for State and Federally listed threatened and endangered species and migratory birds would likely need to be developed in coordination with the Service, TWRA, and TDEC prior to the Service supporting any conveyance of the remaining Parcel ED-1 to CROET. At a minimum, the same level of scrutiny regarding the potential for neotropical migratory bird habitat fragmentation in the focus area of ORR should be extended to the entire Parcel ED-1, including previously developed areas. It might be prudent to include re-consideration of the entire Parcel ED-1 in the current assessment process being performed for the ORR Land Use Planning Focus Workgroup.

Informal conversations with DOE staff have included the topic of the potential for transferring Section 7 consultation requirements from DOE to CROET, but we are unaware that any discussions between Department of Interior and DOE solicitors have occurred regarding this subject. A determination of whether a private entity could legally comply with the provisions of Section 7 of the Endangered Species Act would have to be made. There are additional issues associated with the Migratory Bird Treaty Act which should also be discussed between our respective agency solicitors.

In the past, we have not administered a permitting program for incidental take of migratory birds. Instead, we have attempted to work cooperatively with agencies, and others, in the planning stages of projects to identify measures to avoid or mitigate take of birds, and have used enforcement discretion to allow otherwise lawful activities to proceed. However, third parties may now bring suits against Federal agencies under the Administrative Procedures Act for actions that result in the take of migratory birds without Service authorization.

Based on the above concerns, the Service believes that the addendum to the Parcel ED-1 EA and the MAP are inadequate, and at the present time, we cannot support the proposed fee title transfer of Parcel ED-1 to CROET. We believe the history associated with the initial characterization of Parcel ED-1 in the 1996 EA, the subsequent issuance of a mitigated FONSI, the environmental compliance record of CROET contractors, the absence of specific data quality objectives in the development of the MAP, the failure to fully implement the MAP as promised and intended, and the absence of specific DOE oversight of CROET activities collectively do not support the conclusions contained in the addendum which support the proposed fee title transfer of Parcel ED-1 to CROET. If the current situation is indicative or predictive of conditions in the future, the Service cannot even support the no action alternative. Therefore, we believe this proposal constitutes a major Federal action, and the Service requests that the proper procedures pursuant to the National Environmental Policy Act of 1969 be initiated through the development of an Environmental Impact Statement.

These constitute the comments of the U.S. Department of the Interior in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander of my staff at 931/528-6481, ext. 210, or via e-mail at [steven\\_alexander@fws.gov](mailto:steven_alexander@fws.gov).

Sincerely,



Lee A. Barclay, Ph.D.  
Field Supervisor

**xc:** Sam Hamilton, FWS, Atlanta  
Bruce Bell, FWS, Atlanta  
Greg Hogue, DOI-OEPC, Atlanta  
Terence N. Martin, DOI-OEPC, Washington  
Holly Deal, DOI-SOL, Atlanta  
Michael Holland, DOE, Oak Ridge  
Marianne Heiskell, DOE, Oak Ridge  
Patricia Dreyer Parr, ORNL, Oak Ridge  
John Owsley, TDEC, Oak Ridge  
Paul Davis, TDEC, Nashville  
Reggie Reeves, TDEC, Nashville  
Gary Myers, TWRA, Nashville  
Dave McKinney, TWRA, Nashville  
ORR Land Use Planning Focus Group



**Oak Ridge Reservation  
Local Oversight Committee**

June 13, 2002

David R. Allen  
U.S. Department of Energy  
SE-30-1  
PO Box 2001  
Oak Ridge, Tennessee 37831

*Subject: LOC Board resolution on draft Environmental Assessment Addendum and on draft Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (May 2002; DOE/EA-1113-A)*

Dear Mr. Allen:

The Oak Ridge Reservation (ORR) Local Oversight Committee (LOC) Board of Directors unanimously passed a resolution at its regular meeting of May 30, 2002, stating its position on the subject EA addendum. The LOC's position is as follows:

***The preferred alternative outlined in the EA is not sufficient  
to meet DOE's obligations for environmental mitigation.***

As DOE chooses its alternative for the proposed action, the LOC requests that it take this issue into consideration and adopt a robust strategy for ensuring that important sensitive ecological areas will be appropriately protected in perpetuity.

Comments on the two documents under consideration have been submitted by the LOC's Citizens' Advisory Panel under separate cover.

The LOC is a non-profit regional organization funded by the State of Tennessee and established to provide local government and citizen input into the environmental management and operation of the DOE's ORR. The Board of Directors of the LOC is composed of the elected and appointed officials of the seven surrounding counties and the City of Oak Ridge, and the Chair of the Citizens' Advisory Panel.

Thank you for the opportunity to comment on these documents.

Sincerely,

John B. Evans  
Chair, LOC Board of Directors

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Log No. 65772

Date Received JUN 17 2002

File Code \_\_\_\_\_

**Anderson • Meigs • Rhea • Roane • City of Oak Ridge • Knox • Loudon • Morgan**

cc: LOC Document Register  
LOC CAP  
LOC Board  
John Owsley, Director, TDEC DOE-O  
Michael Holland, Acting Manager, DOE ORO  
Pat Halsey, FFA Administrative Coordinator, DOE ORO  
Luther Gibson, Chair, ORSSAB  
Carol M. Borgstrom, Director, NEPA Oversight, DOE HQ



**Oak Ridge Reservation  
Local Oversight Committee**

June 13, 2002

David R. Allen  
U.S. Department of Energy  
SE-30-1  
PO Box 2001  
Oak Ridge, Tennessee 37831

*Subject: Comments on draft Environmental Assessment Addendum and on draft Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (May 2002; DOE/EA-1113-A)*

Dear Mr. Allen:

The Oak Ridge Reservation (ORR) Local Oversight Committee (LOC) Citizens' Advisory Panel (CAP) submits the attached general and detailed comments on the subject EA. These comments should be attributed to the CAP only, although the LOC Board has directed the CAP to comment on the documents.

At its regular meeting of May 30, 2002, the LOC Board unanimously passed the following resolution regarding the proposed action and the draft documents, "The preferred alternative outlined in the EA is not sufficient to meet DOE's obligations for environmental mitigation." The CAP's comments support the Board's position.

The CAP of the LOC has up to 20 members with diverse backgrounds representing the greater ORR region; the CAP studies problems in depth and provides advice to the LOC Board and other governmental agencies.

The LOC CAP appreciates the opportunity to comment on these documents and the proposed action.

Sincerely,

Norman A. Mulvenon  
Chair, LOC Citizens' Advisory Panel

Enclosure

cc: LOC Document Register  
LOC CAP  
LOC Board  
John Owsley, Director, TDEC DOE-O  
Michael Holland, Acting Manager, DOE ORO  
Pat Halsey, FFA Administrative Coordinator, DOE ORO  
Luther Gibson, Chair, ORSSAB  
Carol M. Borgstrom, Director, NEPA Oversight, DOE HQ

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Log No. 65777  
Date Received JUN 17 2002  
File Code \_\_\_\_\_

**Anderson • Meigs • Rhea • Roane • City of Oak Ridge • Knox • Loudon • Morgan**

Comments on draft Environmental Assessment Addendum and on draft Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (May 2002; DOE/EA-1113-A)

General Comments

The proposed DOE transfer of ED-1 to CROET should be considered in context of the ORR as a whole, including DOE's missions, long-term missions of other government agencies, DOE's expectations for continued downsizing, the trend to transfer land piecemeal, and the impact of such on the value and integrity of the ORR natural areas and the reservation as a whole. It would have been preferable to carry out an Environmental Impact Statement for the whole Oak Ridge Reservation before the release of greenfield property, rather than an Environmental Assessment, culminating in a questionable FONSI. Transfer of ORR land to other entities by DOE for economic development is a permanent change of status for undeveloped land. There is no equivalent protection or permanent preservation for the natural areas of the Reservation.

DOE must ensure that the existing exclusion zone or Natural Area is appropriately protected. Actions specified in the Mitigation Action Plan (MAP) are necessary to support a Finding of No Significant Impact (FONSI). During the development phase, construction activities must not be allowed to impact the exclusion zone. Post-development, an enforceable mechanism must be in place to ensure that private owners (CROET or its successors) fulfill their obligations for environmental monitoring and other management actions required under the FONSI and MAP.

A major failure of the EA addendum is lack of appropriate evaluation of other alternatives for the protection of the Natural Area, including transfer to an entity other than CROET or imposition of protective measures (such as a conservation easement) in addition to the MAP.

Rejection of Preferred Alternative

The CAP rejects the preferred alternative, which the EA addendum admits is the "bounding, worst-case" impact.

The CAP would prefer to see the parcel as a whole or the developable area be deeded to the City of Oak Ridge instead of CROET. More than \$14 million of public funds has been spent on infrastructure of the Horizon Center, or about \$33,000 per acre developable for industry. This represents a substantial investment of taxpayer money. By waiving its rights to the self-sufficiency parcel, the City is foregoing a substantial asset.

Transfer of the developable 426 acres to CROET is acceptable, but not the most desirable option. Because of the substantial public investment, there should be mandatory provision for oversight or auditing of CROET or its subsidiary corporation by the city, DOE, or an independent oversight group regarding how money from the sale of DOE transferred land is distributed and to whom. Oak Ridge taxpayers have a right to know how these resources are used.

The CAP opposes the transfer the approximately 491 acres of Natural Area to CROET. The most effective alternative to ensure that the Natural Area is protected in perpetuity is to transfer the entire Natural Area to an agency or organization that is equipped to manage it for conservation purposes. Another option is transfer of the Natural Area to the City of Oak Ridge which can then accord it greenbelt status. Retention of the 531 sensitive acres by DOE until

permanent protection can be arranged is more acceptable than transfer to CROET. Concerns regarding the transfer of the Natural Area to CROET are listed below:

- CROET's stated mission is restricted to economic development. This is inconsistent with the requirements for ecological monitoring.
- To date CROET has not fulfilled its ecological monitoring responsibilities on ED-1 (Horizon Center) under the April 1996 MAP.
- There is no reason to believe that CROET will willingly undertake the necessary degree of ecological monitoring of the natural area once it owns the entire parcel.
- The development plan encroaches on the original exclusion zone, with less ecologically significant acreage "traded" for this encroachment in other areas. This can be seen by comparing Fig. MAP-4 in the April 1996 MAP to CROET's current development plan.
- Once all developable sites are sold to private industries, CROET will then only own the infrastructure, roadways, and Natural Area. With no further income from land sales, there will be no source of funds to continue needed inspections, protection from encroachment, and any remaining ecological monitoring requirements.
- CROET is a corporation subject to the problems that occasionally beset such businesses. Should it fail or be disbanded, then the responsibility for protection and monitoring of the Natural Area would be in limbo. This scenario should be evaluated in the EA addendum.

#### Other Alternatives for Protection of the Natural Area

If DOE decides to go forward with transfer of the entire parcel to CROET, a preferred strategy for ensuring the integrity of the Natural Area is to remove the responsibility for its ecological monitoring and protection from CROET. The DOE has the ultimate obligation of ensuring compliance with its commitments to mitigation in the EA addendum. The CROET lacks institutional expertise on or commitment to conservation. Options to be analyzed in the EA addendum should include granting a conservation easement to be held by Tennessee Wildlife Resources Agency, the Nature Conservancy, or other conservation organization. This would give the conservation organization legal authority to manage the area for conservation purposes and ensure that the landowner complies with requirements respecting the Exclusion Zone.

Failing adoption of the above options, DOE must establish accountability for future monitoring, protection, and mitigation of the Natural Area by CROET. The proposed deed restriction is not an effective mechanism to ensure accountability. The deed restriction could be enforced only by DOE taking the property back. No one else can enforce the restriction, and there are no less severe enforcement options. Concerns regarding accountability are listed below:

- The draft MAP gives CROET the authority to revise the MAP without any input from the community (page 12). Such revisions constitute a breach of faith with stakeholders who are promised specific monitoring and protections for the Natural Area under NEPA in advance of the transfer.
- Requirements for MAP review and follow-up are vague, and there are no provisions to assure that CROET fulfills its obligations to mitigation. Requirements for monitoring, review, and follow-up should be made explicit and should include external oversight. For example, the



advisory panel described on pages 12 and 13 of the MAP should be mandatory, not at CROET's discretion.

- A mechanism should be established to ensure compliance with the requirements of the MAP by CROET and its successors. Requiring that a performance bond be posted is a good example.

#### Detailed Comments and Corrections

Page 10, Table 3.2 – More recent data on city budgets was made available in connection with the mall. The EA addendum should cite 2001 actual (instead of 1999) and 2003 budget (instead of 2001).

Page 10, Section 3.4.2 – Please clarify if water is supplied by city or ETTP.

Page 11, Section 3.4.5 – Natural gas connection should be shown on Figure 1.3 (1999 and 2000) or on a recommended update (new figure or combined with Figure 1.3) to show activity for 2001 and plans for 2002.

Section 3.5 – The 80-acre area should be shown on one of the maps (or if it refers to Area 4, state this in the text).

Page 13 – Dace Branch is not shown on Figure 1.3 as stated in line 8. Spring 2000 is the most recent sampling date. When in 2002 is sampling scheduled (line 17)?

Page 14 – Pine Ridge is discussed but not shown on Figure 5.1.

Page 16 – The route 58/95 expansion information needs an update from 1999 to material available at the 2002 Tennessee Department of Transportation public hearings.

Page 19 – Table 5.1 is an unrealistic projection. Direct employment is overly optimistic as are the figures for the lower bound. Line 9 gives assumption “that each of these sites meets 100% of its job creation goals.” While this may be considered an upper bound or a maximum impact, it serves to gain political acceptance more than to present a realistic analysis.

Page 20 – Add a discussion of increased invasive species due to development to Section 5.2.5 and Section 4 which begins on page 12. The awareness of this problem has increased since the original EA process began.

June 13, 2002

VIA EMAIL AND U.S. MAIL

Mr. David Allen, SE-30  
U.S. Department of Energy  
P.O. Box 2001  
Oak Ridge, Tennessee 38731-2001

**Re: EA Addendum - Move Forward With Horizon Center**

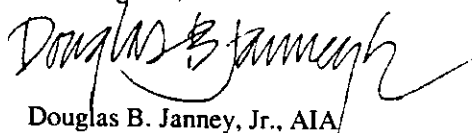
Dear Mr. Allen:

There are several reasons to end the years of assessment and reassessment of environmental conditions at Horizon Center and expeditiously transfer the land for fee-simple availability to private sector development.

1. As the community's largest employer, **the well-founded DOE purpose in releasing the property was to mitigate it's downsizing**, and through its "reindustrialization" program make land available for new business and industry.
2. The official diligence associated with identifying and conserving certain natural areas or special features on this particular property has been exceedingly thorough and has resulted in a plan to develop only one-half of the entire parcel – a significant accommodation on a parcel designated for commercial development, **and which until the mid 1940's was almost entirely under agricultural cultivation.**
3. **Future conservation of the natural areas is afforded without continued DOE monitoring** through numerous means already in place: (a) City of Oak Ridge Greenbelt zoning, (b) Horizon Center Declaration of Covenants and Restrictions, (c) numerous entities that routinely regulate development of building projects, i.e.: TVA, TDEC, Corp of Engineers, City of Oak Ridge Code Enforcement and Engineering permitting, insurance underwriters, and lending institutions. Further "regulation/monitoring" is redundant and unnecessary expenditure of taxpayer dollars.
4. Several years of monitoring data support the statement that **the Horizon Center development model shows that development can occur without harming adjacent undeveloped areas.** Many would agree that the development has improved ecology on the property, which had undergone substantial recent damage though uncontrolled logging and pine beetle infestation.
5. **The City of Oak Ridge is waging the greatest struggle in its history for economic viability.** This is in the wake of the continued downsizing of the City's principal employer for the past 6 decades. The City has been working hard to diversify its economy with new business and industry. The "cloud" placed upon successfully marketing Horizon Center by the recurring appearance of controversy about environmental issues is not helpful and certainly ironic when one considers the relative minute amount of land to be developed amidst tens of thousands of forested acres viewed from the 10,000-foot perspective. To think that this acreage that until recently was simply farmland, but is now seemingly touted as a national ecological treasure is at least questionable.

I appreciate the opportunity to offer my personal comments and observations and would be glad to elaborate on any of them. If so desired, my daytime phone is 777-2537.

Best Regards,



Douglas B. Janney, Jr., AIA

Native Oak Ridger and Longtime Resident  
Division Manager of Architecture and Planning – Lockwood Greene  
Member, City of Oak Ridge Industrial Development Board

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AMESQ

Log No. 65742

Date Received JUN 17 2002

File Code \_\_\_\_\_

Submitted to: David R. Allen  
U. S. Department of Energy, SE-30-1  
P.O. Box 2001, Oak Ridge, TN 37831  
fax: (865) 576-0746

Submitted by: William Schramm  
220 Outer Drive  
Oak Ridge, TN 37830

Date: June 14, 2002

**Comments on the "Draft EA Addendum for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee" (DOE/EA-1113-A)**

**General Issues**

- 1) The draft EA (as is clear from the document title) is set up with a single entity in mind (essentially the reverse of a "sole-source" action). The proposed action under review is whether or not to release the acreage in question to CROET. This is inconsistent with both the letter and spirit of U.S. regulations (e.g., 41CFR101) overseeing the disposal of federal government real property. Nothing in 10CFR770 waives these requirements for a DOE transfer. The proposed action needs to be redefined to address the transfer of the property to **any** interested public or private sector entity.
- 2) The document provides absolutely no documentation of efforts to advertise the property's availability to a broad group of potentially interested parties. If a transfer to a single entity is to be considered, a lack of interest by other parties should be clearly documented. Such documentation would necessarily go well beyond recording the Oak Ridge City Council's waiver of interest.
- 3) The draft EA fails to address whether a transfer of the ED-1 parcel to CROET violates the Economy Act, OMB Circular A-76 or other statutes/regulations that address competition between federal government entities and the private sector. Violation of these restrictions are a real possibility with the proposed transfer since it is possible that for the purposes of these statutes/regulations CROET constitutes a federal government entity.

This is the case because while CROET is a non-profit entity, it was established primarily to further DOE/OR's objectives on the Oak Ridge Reservation and its principle (possibly its sole) source of funding has been and continues to be the U.S. treasury directly and indirectly (via the collection rents or fees for the use of U.S. government-owned assets).

If CROET is judged to be a U.S. government entity for the purposes of the Economy Act, OMB Circular A-76 and similar statutes/regulations, then CROET should not be competing with the private sector by developing a new industrial park under any circumstances, much less engaging in such an activity with preferential treatment from the federal government (in the form of a possible transfer of land at a price below market value or a transfer not available to other entities). The EA should address in detail the appropriateness of a transfer to CROET in light of restrictions on federal government competition with private sector entities.

- 4) An Environmental Assessment is required to consider the human environment including economic impacts. The draft EA's consideration of economic impacts is so inadequate as to be non-existent. A number of significant economic issues receive no attention or evaluation. For example:

a) CROET's effectiveness

the draft EA states: "CROET has provided information to DOE which indicates that, based on the 6 years of time that has elapsed between the decision to lease Parcel ED-1 and the present, the kind of investment necessary for long-term, commercial development of the parcel is not possible without ownership of the land."

It is not obvious that CROET is the best entity to hold title to ED-1 if the parcel is transferred. It is at least possible that the parcel remains largely unoccupied today because CROET has been ineffective in the role of developer/manager. If this is the case, the transfer of land to CROET will not provide the desired economic development. The draft EA does not, but needs to, address the effectiveness of CROET's operations to date. Such an assessment is appropriate since the economic benefits sought from the proposed action will be more dependent upon CROET's organizational effectiveness under a "transfer" scenario than under a "lease" scenario.

b) Economic benefit to the community

The draft EA does not, but needs to, evaluate whether future development occurring on the ED-1 site will be more advantageous to the community (for example in terms of tax revenue) under the current leasing arrangement, CROET ownership or ownership by some other entity.

c) The Hall Amendment

The Hall Amendment states: "A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years"

DOE "extended" the CROET lease on ED-1 well before the initial 10 year lease expired (in fact, the 10 year lease has yet to expire). If an assessment of CROET performance to date indicates that CROET ineffectiveness has hindered development of ED-1, then DOE must consider whether the goal of economic development can be furthered by permitting CROET control over the site for the term of the lease renewal.

In such a case, DOE should evaluate the possibility of voiding the lease extension/renewal and the draft EA should include an additional alternative to the proposed action. That alternative would be:

DOE will honor the initial 10 year CROET lease, but any lease renewal or extension will be voided and following lease expiration, DOE will offer parcel ED-1 to all interested parties.



STATE OF TENNESSEE

DON SUNDQUIST  
GOVERNOR

June 14, 2002

David R. Allen  
United States Department of Energy  
Oak Ridge Operations Office  
200 Administration Road  
Oak Ridge, Tennessee 37831

RE: State of Tennessee's Comments on the Department of Energy's National Environmental Policy Act Environmental Assessment of the Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee.

Dear Mr. Allen:

I am responding on behalf of the governor of the state of Tennessee as the lead point of contact for state NEPA reviews concerning the Department of Energy's (DOE) *National Environmental Policy Act Environmental Assessment of the Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee* (the EA). Also enclosed are comments from specific state agencies. Please consider these comments as you would those in this letter.

We have reviewed the specific proposed action described in the EA. We strongly support the transfer of the developable acreage to the Community Reuse Organization of East Tennessee (CROET). Ownership of the developable portion of Parcel ED-1 will improve CROET's ability to market and develop the property. Prior to the transfer of any contaminated areas, DOE will have to obtain approval from the governor pursuant to CERCLA.

We strongly recommend that DOE retain ownership and control of the remaining 531 acres of natural area at this time. Wildlife habitat, plant communities, threatened and endangered species, water resources, wetlands, and historic and archaeological resources are contained within the natural area. We believe DOE should retain ownership until all issues relating to their protection are adequately addressed.

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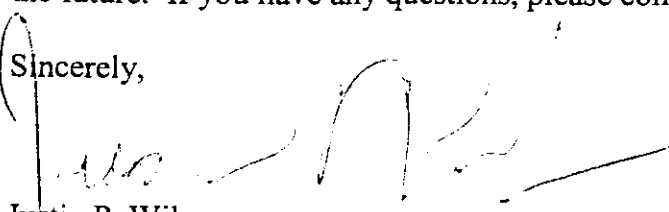
File Code

State Capitol, Nashville, Tennessee 37243-0001  
Telephone No. (615) 741-2001

65764  
JUN 17 2002

We appreciate the opportunity to comment and will respond to additional opportunities in the future. If you have any questions, please contact David L. Harbin at (615) 532-0144.

Sincerely,



Justin P. Wilson  
Deputy to the Governor for Policy

Encl.

The following state agencies commented on the EA:

The Tennessee Department of Environment and Conservation  
Division of Natural Heritage  
Oak Ridge operations Office

The Tennessee Wildlife Resources Agency

The Tennessee Department of Economic and Community Development



STATE OF TENNESSEE  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

June 12, 2002

Mr. David R. Allen  
United States Department of Energy  
Oak Ridge Operations Office  
200 Administration Road  
Oak Ridge, Tennessee 37831

Dear Mr. Allen:

The Tennessee Department of Environment and Conservation, Division of Natural Heritage (DNH), appreciates the opportunity to review and comment on the May 2002 Environmental Assessment Addendum for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee, and offers the following comments.

Under the May 2002 EA Addendum, DOE proposes to transfer title of, rather than lease, the entirety of the 957 acre Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET) for the expressed purpose of maximizing the developable acreage while preserving important ecological and scenic features of the parcel. CROET would be responsible for the development of the 426 developable acres of Parcel ED-1, as well as for the protection of wildlife habitat, plant communities, threatened and endangered species, water resources, wetlands, and historic and archaeological resources within the 531 acre exclusion area, or natural area, of Parcel ED-1. The transfer agreement would require that CROET comply with the provisions of a Mitigation Action Plan (MAP), and the deed would contain restrictions that ensure the continued protection of the 531 acre natural area, and that the uses of the developable areas are consistent with those analyzed in the 1996 EA.

While CROET may be best qualified to own and manage the 426 developable acres, the DNH has reservations about CROET providing for the long-term stewardship and ecological monitoring of the 531 acre natural area.

While the May 2002 EA Addendum does seem to prefer the proposed action of a transfer of title of the entirety of Parcel ED-1 to CROET, it also provides for two other options: the transfer of only the 426 developable acres and retaining ownership and control over the 531 acre natural area; and the transfer of all of Parcel ED-1 except for the EFPC floodplain, which would remain under DOE ownership and control in order to address possible future requirements under CERCLA. It appears that a no-action alternative would continue the current lease with CROET.

Based upon the ecological significance of the 531 acre natural area and reservations that the DNH has about CROET providing for the natural areas long-term stewardship and ecological monitoring, the DNH prefers that DOE transfer only the 461 developable acres to CROET as proposed, but retain ownership and control over the remaining 531 acre natural area.

Further, in June 2001 the DNH submitted to DOE a formal request to expand a 1985 Natural Areas Registry Agreement between the State of Tennessee and DOE to incorporate approximately 20,000 acres of ecologically significant lands at the ORR. These 20,000 acres were very carefully delineated so as to avoid areas that were best suited for development or other uses. While the 1985 Agreement recognized 7 discreet areas covering approximately 2,000 acres as Registered State Natural Areas, the 2001 proposal identifies and delineates 5 new landscape scale natural area sub-units covering approximately 20,000. One of these sub-units, Blackoak Ridge, includes the 531-acre natural area of Parcel ED-1, but excludes the 426-acre developable area of Parcel ED-1. Our preferred alternative of DOE retaining ownership and control of the 531-acre natural area is consistent with the DNH June 2001 Natural Area proposal.

In summary, the DNH prefers that DOE retain the 531-acre natural area portion of Parcel ED-1, and that the Oak Ridge National Lab (ORNL) continue its monitoring of the area.

Again, we appreciate the opportunity to comment on the Draft Addendum to the Environmental Assessment for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee. Please feel free to contact me at 615-532-0431 should you have any questions or need any additional information

Sincerely,

A handwritten signature in black ink, appearing to read 'Reginald G. Reeves', with a long horizontal flourish extending to the right.

Reginald G. Reeves.  
Director





STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DOE OVERSIGHT DIVISION  
761 EMORY VALLEY ROAD  
OAK RIDGE, TENNESSEE 37830-7072

June 12, 2002

David R. Allen  
NEPA Compliance Officer  
DOE Oak Ridge Operations  
PO Box 2001, SE-32  
Oak Ridge, TN 37831-8739

Dear Mr. Allen

**National Environmental Policy Act Environmental Assessment Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET)**

The Tennessee Department of Environment and Conservation, DOE Oversight Division has reviewed the subject document in accordance with the requirements of the National Environmental Policy Act and associated regulations of 40 CFR 1500-1505 and 10 CFR 1021 as implemented.

**General Comments**

The Data Summary presented in pages 5 and 6 of the Mitigation Action Plan (MAP) referring to the previous MAP indicates that the monitoring activities by the Department of Energy (DOE) and its contractors have progressively decreased since 1997. This indicates a failure to meet the minimum monitoring mitigation efforts required in the previous MAP. In a letter dated February 12, 2002 to DOE, the state expressed concern regarding DOE's seeming lack of commitment to comply with the implementation of the previous MAP and requested that DOE fully and clearly address its position on the execution of the mitigation activities as outlined in the "*Environmental Assessment (DOE/EA-1113), Finding Of No Significant Impact (FONSI).*"

The Lower East Fork Poplar Creek (LEFPC) Floodplain Soils Remedial Action project only addressed mercury contaminated soils within the 100 year floodplain. Because of continuing releases of mercury into LEFPC from the Y-12 Plant, surface water and sediment issues for LEFPC were to be addressed as part of the DOE Y-12 Plant Environmental Restoration Program. Although steps have been taken at Y-12 to reduce mercury discharges into the creek, no CERCLA decision has been made concerning the LEFPC surface water and sediments. Therefore, this EA should address DOE's plans to insure proper activities are completed in accordance with Section 120 (H) of CERCLA prior to transfer of properties from the Oak Ridge National Priority List (NPL) site.

**Specific Comments**

**Section 3.4.2 Water Supply:** The reference to the proposed water storage tank should be more specific regarding the future water needs for the site. Discuss alternative plans for the future development of the site, which is dependent upon the completion of the cities "looped" service, if this "looped" service is not implemented.

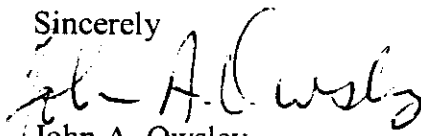
**Section 4.1 Threatened and Endangered Species:** The implication that construction activities on the site were the cause of the decline in Tennessee Dace in Dace Branch is speculation at best. There has been continued decline of population numbers over the years since the end of construction indicating that there may be other causal factors involved. Continued monitoring at this point is needed to further evaluate the condition of this fish population. If current sampling indicates that the population has been further affected, DOE should implement whatever action plan is necessary to mitigate impacts.

**Section 4.2 Cultural Resources: Line 30:** "....these sites would continue to be periodically inspected...." DOE should be specific on how to implement the inspection.

**MAP Document Page 3, Figure 1.1:** The coverage of the Threatened and Endangered species appears to be incomplete. There are omissions of formerly identified (see references below) cultural resources on the map (Page 3, Fig. 1.1) in the MAP document. These omissions include cultural resource site numbers: 950A, 953A, 935A, 953B/C, 954A, and 975A/B. References: (1) An Evaluation of Previously Recorded and Inventoried Archaeological Sites on the ORR, Anderson & Roane Counties, Tennessee, ORNL/M-4946, DuVall, Glyn D. and Sousa, Peter A., 1996. (2) Historic Sites Reconnaissance of the Oak Ridge Reservation, Oak Ridge, Tennessee, ORNL/TM-5811, Fielder, George F., et al, April 1977.

If you have any questions concerning the above questions, please contact me at (865) 481-0995.

Sincerely



John A. Owsley  
Director

xc: Dodd Galbreath, TDEC  
Reggie Reeves, TDEC  
Robert Brown, DOE  
Margaret Morrow, DOE  
Steven Alexander, FWS  
Lawrence Young, CROET



## TENNESSEE WILDLIFE RESOURCES AGENCY

ELLINGTON AGRICULTURAL CENTER  
P. O. BOX 49747  
NASHVILLE, TENNESSEE 37264

June 10, 2002

Mr. David Harbin  
Office of the Commissioner  
Department of Environment and Conservation  
20<sup>th</sup> Floor, L&C Tower  
401 Church Street  
Nashville, TN 37243-0454

Re: ED-1 Land Transfer  
U.S. Department of Energy  
Oak Ridge Reservation

Dear Mr. Harbin:

The Tennessee Wildlife Resources Agency (TWRA) recommends that the U.S. Department of Energy (DOE) retain ownership of all ED-1 lands identified for conservation purposes. We recommend that DOE prepare a comprehensive plan for the reservation which would protect lands in perpetuity for conservation purposes. This plan should make provisions for conservation research and national security projects.

TWRA has no objection to the transfer of ED-1 lands previously identified for development purposes. Please include this recommendation in Tennessee's formal response to the proposed ED-1 land transfer.

Sincerely,

  
Aubrey D. McKinney, Chief  
Environmental Services Division

ADM:bg

The State of Tennessee

AN EQUAL OPPORTUNITY EMPLOYER



Department of Economic and Community Development

William Snodgrass/Tennessee Tower Building, 11th Floor, 312 8th Avenue North, Nashville, Tennessee 37243  
615-741-1888 / FAX: 615-741-7306

Tony Grande  
Commissioner

Don Sundquist  
Governor

**MEMORANDUM**

**TO:** David Harbin, TDEC  
**FROM:** Tony Grande <sup>TG</sup>  
**DATE:** May 23, 2002  
**SUBJECT:** Comments-NEPA Environmental Assessment  
Proposed Transfer of Parcel ED-1 to CROET  
Oak Ridge, Roane County, Tennessee

The Department of Economic and Community Development very much supports the fee simple transfer of the ED-1 Site from DOE to CROET. We have always had a concern regarding the desirability of leasehold interests to the private industrial market as enumerated in Paragraph 2 of Page 6 of the EA Addendum. The average to major size industrial prospect is just not interested in long term leases when fee simple holdings are so available. We have seen this demonstrated in numerous "industrialization" efforts by federal interests across the state. Leaseholds are generally only attractive to small, specialized industries (usually related to the prime use of the major site such as a munitions plant) or to startup industries. CROET's ownership of Parcel ED-1 will vastly improve its success with marketing said property.

Should you have any questions or need any further comments, please contact my office or Wilton Burnett.

TG/WB/tr

## Cange, Susan M

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**From:** Allen, David R  
**Sent:** Friday, June 14, 2002 7:54 AM  
**To:** Cange, Susan M  
**Cc:** Carnes, Nancy L; Kates, Katy; Hart, Melissa; Elmore, James L  
**Subject:** FW: Parcel ED-1 EA/MAP and cerulean warbler

This is more information than actual comment, however it should be included in as comments on our documents. Melissa please include it in the file for the ED1 comments.

David A.

-----Original Message-----

From: Ellen Smith [mailto:smithellen@comcast.net]  
Sent: Thursday, June 13, 2002 11:47 PM  
To: Allen, David R  
Subject: Parcel ED-1 EA/MAP and cerulean warbler

David:

Having heard from several people about observations of the cerulean warbler in the exclusion area at Parcel ED-1, I tried to verify the actual federal status of this species is. I'd like your office to be aware of the information I found:

Before 1996, the cerulean warbler was a candidate species (C2) for listing as threatened or endangered. However, in 1996 the USFWS discontinued the designation of C2 species as candidates for listing (50 CFR 17; 28 February 1996).

The Southern Environmental Law Center (  
[http://www.selcga.org/act\\_cerulean\\_warbler.shtml](http://www.selcga.org/act_cerulean_warbler.shtml) )  
says:

SELC filed a petition with the FWS in October 2000, to list the Cerulean warbler as a threatened species, which was followed by our 60-day Notice of Intent, filed March 9, 2001 to sue the agency under the Endangered Species Act for the its failure to respond to the petition.

In response to the 60-day notice, the FWS has committed to make a decision about listing the Cerulean as a "candidate" species.

That website has a LONG list of petitioners requesting a threatened-species listing:  
[http://www.selcga.org/res\\_news\\_2001-03-12.shtml](http://www.selcga.org/res_news_2001-03-12.shtml) . A summary of the petition is at  
[http://www.forestfest.com/Cerulean\\_Warbler/Summary\\_of\\_Petition.htm](http://www.forestfest.com/Cerulean_Warbler/Summary_of_Petition.htm) .

Defenders of Wildlife provided a short quotation about the bird's status at <http://www.defenders.org/releases/pr2000/pr112200.html> :

Since 1966, the cerulean warbler's population has shrunk by more than 70 percent, making it one of the fastest disappearing songbirds in the United States. Habitat loss is the primary reason for the disappearance of the cerulean warbler, with commercial logging and mountaintop removal coal mining as the main culprits. The species and its habitat are currently not protected, which biologists predict will lead to extinction of the species in the near future.

-- Ellen Smith, 116 Morningside Drive, Oak Ridge, TN 37830